

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,420

IN THE MATTER OF:

Served March 3, 2015

EXPRESS TRANSIT, LLC, Suspension)
and Investigation of Revocation of)
Certificate No. 1644)

Case No. MP-2013-149

This matter is before the Commission on respondent's response to Order No. 15,197, served November 14, 2014, revoking Certificate No. 1644 and assessing a \$500 civil forfeiture for knowingly and willfully operating while suspended and uninsured. Respondent seeks reinstatement of Certificate No. 1644.

I. BACKGROUND

Certificate No. 1644 was automatically suspended on December 16, 2013, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,411, served December 16, 2013, noted the automatic suspension of Certificate No. 1644, directed respondent to cease transporting passengers for hire under Certificate No. 1644, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1644.

Respondent paid the late fee and submitted \$1 million primary and \$500,000 excess WMATC Insurance Endorsements, and the suspension was lifted in Order No. 14,457 on January 6, 2014, but because the effective date of the new endorsements is January 3, 2014, instead of December 16, 2013, the order gave respondent 30 days to verify cessation of operations as of December 16, 2013, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14. Respondent did not respond.

Because respondent had not denied operating its vehicle(s) on and after the suspension date, and because respondent had failed to produce the required documents, Order No. 14,817, served June 5, 2014, gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1644, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

After Order No. 14,817 was issued, respondent belatedly produced business records. Those records included a Payment Bill Report from LogistiCare Solutions, LLC, which indicated respondent was

paid \$172 for transporting a passenger on December 16, 2013. Respondent was suspended and uninsured on that date.

Accordingly, Order No. 15,197, served November 14, 2014, revoked Certificate No. 1644 and assessed a \$500 forfeiture against respondent for knowingly and willfully operating while suspended and uninsured.

II. RESPONSE TO ORDER NO. 15,197

On December 10, 2014, respondent filed a letter signed by its owner, Charles Revell, requesting reinstatement of Certificate No. 1644.

The letter does not allege error on the part of the Commission and in fact confirms our finding in Order No. 15,197 that respondent transported a passenger on December 16, 2013, while respondent was suspended and uninsured. Instead, the letter makes two arguments in support of reinstatement. First, it asserts that respondent was not motivated by profit when transporting the passenger on December 16, 2013. Second, the letter argues that the December 16 violation was not intentional or willful.

III. ANALYSIS

Under Title II of the Compact, Article XIII, Section 4(a), and Commission Rule No. 27, an application for reconsideration of a Commission order must be filed within 30 days of its publication and state specifically the errors claimed as grounds for reconsideration.

Respondent's letter was timely filed so as to be considered an application for reconsideration, but as noted above, it does not allege any error on the part of the Commission.

In any event, the record contradicts the argument that respondent was motivated by altruistic reasons rather than profit, not that this would matter.¹ According to the Logisticare Payment Detail Report for December 26, 2013, respondent was paid the "Billed Amount" for the December 16 trip.

Likewise, we see no reason to disturb our finding that respondent's violation was knowing and willful. As noted in footnote 7 of Order No. 15,197, respondent expressly requested that its replacement insurance coverage take effect on January 1, 2014, despite a warning from its broker that the renewal date was

¹ See *In re Exact Enters. Inc.*, No. MP-10-049, Order No. 12,602 at 2 (Oct. 26, 2010) (service provided under contract is for-hire even in absence of invoices for particular trips); *In re Madison Limo. Serv., Inc.*, No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (holding that continuation of certificated operations at no charge is "transportation for hire") (citing *Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express v. Madison Limo. Serv., Inc.*, No. FC-90-02, Order No. 3810 at 6 (Aug. 30, 1991); *Unique Freight Lines Co. v. White Tiger Transp. Co.*, 618 F. Supp. 216 (S.D.N.Y. 1985)), *aff'd on reconsideration*, Order No. 3914 (Mar. 25, 1992).

December 16, 2013, and notwithstanding the plain language of the WMATC Insurance Endorsement stating that coverage would expire at 12:01 a.m. on December 16, 2013.

Finally, intent is not an element of the offense. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.² The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.³ Employee negligence is no defense.⁴ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁵

Accordingly, we affirm our conclusion in Order No. 15,197 that the record supports a finding that respondent knowingly and willfully furnished the LogistiCare trip on December 16, 2013, and respondent knew, or ought to have known, that it had no insurance coverage in place at that time.

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority.⁶ They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.⁷

For the foregoing reasons, respondent's request for reinstatement of Certificate No. 1644 is denied.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director

² Order No. 15,197 at 2 (citing *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 at 3 (Mar. 8, 2010)).

³ *Id.* at 3.

⁴ *Id.* at 3.

⁵ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

⁶ Compact, tit. II, art. XI, § 7(g).

⁷ Order No. 12,330 at 4.